UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 7

SYSCO GRAND RAPIDS, LLC,

Respondent/Employer,

and

GENERAL TEAMSTERS UNION LOCAL NO. 406, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Charging Party/Petitioner.

Case: 07-CA-146820 07-CA-148609 07-CA-149511 07-CA-152332 07-CA-155882 07-RC-147973

RESPONDENT/EMPLOYER'S MOTION FOR A MORE DEFINITE STATEMENT

On November 25, 2015, Region Seven issued a Second Consolidated Complaint against Sysco Grand Rapids LLC (see attached). For the following reasons, the Region should be compelled to produce a bill of particulars which provides the Respondent with the basis to prepare its defense in this litigation.

- 1. On November 25, 2015 the Region issued a Second Consolidated Complaint setting hearing in the matter for February 16, 2016.
- 2. The Second Consolidated Complaint ("Complaint") is over nine pages long and identifies over 60 alleged violations of §§8(a)(1) and (3) of the Act.
- 3. The Board has long recognized that an administrative complaint must recite allegations "with sufficient particulars to enable [a respondent] to adequately

prepare for hearing and defend against the allegations of the complaint." See, United Steelworkers of America, 153 NLRB 1561, 1562 n.2 [1965].

- 4. Among the necessary allegations which must be present to fulfill this standard are the recitation of the "acts claimed as unfair labor practices, the names of the agents who allegedly committed them and the dates upon which they were committed." See, Bausch & Lomb, Inc., 140 NLRB 1400, 1401 (1963), see also, Baltimore Steam Packet Co., 120 NLRB 1521, 1522 (1958).
- 5. Where the allegations of a complaint do not meet these basic, minimum standards, the NLRB has consistently ordered the Region to issue a bill of particulars meeting those basic minimum standards. See, Jackson Building, 172 NLRB 1352, 1353 (1968); B.B.S.A., 164 NLRB 975, 975-976 (1967); Tex-Tan, 134 NLRB 253, 256 (1961); Cummer Graham, 90 NLRB 722, 740 (1950); Joy Silk Mills, 85 NLRB 1263, 1268 n.2 (1949); and Cleveland Worsted Mills, 43 NLRB 545, 549 (1942).
- 6. The Complaint in this action fails to meet the minimum standards set out by the Board. As an initial matter, the Complaint fails to identify the date of the alleged violations. In the following allegations, the Complaint merely recites time frames during which the alleged violation occurred. Some time frames involve an entire month or portions of two month periods. The Region should be required to allege with as much specificity as possible "the date" of the alleged violation in paragraphs:

5(a)

6(a)

7(a)

(b)

8(a)

(b)

(c)

(e)

(f) (h) (i) 10(a) (b) 11(c) (d) (e) 12(a) 15(d) 16(b) 17(a)

18. The allegations of the Complaint are generally vague with regard to the nature of the alleged misconduct the Respondent's alleged agents allegedly committed. For example, while the Region identifies the alleged statutory employee who was the subject of illegal conduct in paragraph 21 of its Complaint, the Region uniformly fails to allege the identity of any other statutory employee who was the subject of misconduct throughout the rest of the Complaint. Plainly, that information would both assist the Respondent in presenting testimony in its defense and preparing crossexamination. Moreover, while the Region frequently recites a generic scope of conduct violative of the Act in paragraphs 8, 10, 11, 12, 16, 17 and 20, the Region follows the generic description of language with a block of names, locations and occasionally dates creating the impression that the Respondent - through its agents - stated the same thing on each occasion, when plainly, that is not the allegation. The failure to specify its allegations prejudices the Respondent in its ability to prepare both cross-examination and prepare witnesses for its case-in-chief. The Region should be compelled to allege and identify the "acts claimed as unfair labor practices" by reciting with as much specificity what the alleged agents actually did or said that allegedly constitutes a

violation of the Act. This information is critical to both developing the examination of witnesses and gathering evidence for the Respondent's case-in-chief.

WHEREFORE, the Respondent prays that the Administrative Law Judge compel the Region to issue a bill of particulars providing the dates of the alleged misconduct and the specifics of its allegations. The Respondent sees no reason why such relief cannot be ordered and complied with in 10 days to facilitate the commencement of hearing at the scheduled date. However, if the Administrative Law Judge determines to provide more time to the Region, a postponement of the hearing date will become necessary to permit the Respondent to utilize the particulars in the preparation of its defense.

Respectfully submitted, this 17th day of December, 2015.

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SYSCO GRAND RAPIDS LLC By Counsel

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UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION SEVEN

SYSCO GRAND RAPIDS, LLC

Respondent/Employer

and	Case	07-CA-146820
		07-CA-148609
		07-CA-149511
GENERAL TEAMSTERS UNION LOCAL		07-CA-152332
NO. 406, INTERNATIONAL BROTHERHOOD		07-CA-155882
OF TEAMSTERS		07-RC-147973

Charging Party/Petitioner

I. ORDER FURTHER CONSOLIDATING CASES AND SECOND CONSOLIDATED AMENDED COMPLAINT

II. REPORT ON OBJECTIONS

III. ORDER CONSOLIDATING UNFAIR LABOR PRACTICE AND REPRESENTATION CASES

IV. NOTICE OF CONSOLIDATED HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED that Cases 07-CA-146820, 07-CA-148609 and 07-CA-149511, filed by the Charging Party against Respondent in which a Consolidated Complaint and Notice of Hearing issued on September 30, 2015, are further consolidated with Cases 07-CA-152332 and 07-CA-155882, filed by the Charging Party against Respondent.

This Order Further Consolidating Cases and Second Consolidated Amended Complaint, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act) and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below:

- 1(a). The charge in Case 07-CA-146820 was filed by the Charging Party on February 23, 2015, and a copy was served on Respondent by U.S. mail on the same date.
- (b). The amended charge in Case 07-CA-146820 was filed by the Charging Party on April 1, 2015, and a copy was served on Respondent by U.S. mail on the same date.

- (c). The charge in Case 07-CA-148609 was filed by the Charging Party on March 20, 2015, and a copy was served on Respondent by U.S. mail on March 23, 2015.
- (d). The charge in Case 07-CA-149511 was filed by the Charging Party on April 6, 2015, and a copy was served on Respondent by U.S. Mail on the same date.
- (e). The charge in Case 07-CA-152332 was filed by the Charging Party on May 14, 2015 and a copy was served on Respondent by U.S. Mail on May 15, 2015.
- (f). The amended charge in Case 07-CA-152332 was filed by the Charging Party on July 13, 2014 and a copy was served on Respondent by U.S. Mail on July 14, 2015.
- (g). The charge in Case 07-CA-155882 was filed by the Charging Party on July 13, 2015 and a copy was served on Respondent by U.S. Mail on July 14, 2015.
- 2(a). At all material times, Respondent has been a limited liability company with facilities in Alanson, Cadillac, Grand Rapids and West Branch, Michigan, and has been engaged in the non-retail sale and distribution of food products and related products.
- (b). During the calendar year ending December 31, 2014, Respondent, in conducting its operations described above in paragraph 2(a), purchased and received at its Michigan facilities goods valued in excess of \$50,000 directly from points outside the State of Michigan.
- (c). At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 3. At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.
- 4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Tom Shaeffer - President

Mark Lee - Chief Financial Officer

Amy Campbell - Vice President of Human Relations

Ted Twyman - Vice President of Operations

Todd Yocum - Transportation Manager

Dean Mercer - Transportation Supervisor

Joe Quisenberry - Transportation Supervisor

Jim Brown - Transportation Supervisor

Ryan Norman - Transportation Supervisor

Mike Scott - Warehouse Supervisor

Mark Szlachchic - - Warehouse Director

Bobby Jordan - Manager, Employee & Labor Relations

Charlie Stephenson

Agent

Craig Pung

Transportation Supervisor

Christopher Wilfong

Environmental Health, Safety and Security Manager

- 5. Respondent, by the individuals named below, about the dates opposite their names, at its Grand Rapids facility, threatened employees with wage loss and a reduction in wages if they chose to be represented by the Charging Party:
 - (a). Late December 2014 by Joe Quisenberry
 - (b). February 24, 2015 by Jim Brown
- 6. Respondent, by the individuals named below and about the dates and at the locations listed below:
- (a). Late February 2015 at its Grand Rapids facility by Joe Quisenberry threatened employees with loss of access to supervisors if they chose to be represented by the Charging Party;
- (b). February 24, 2015 at its Grand Rapids facility by Jim Brown threatened employees with more rigorous enforcement of discipline, including removal of progressive discipline steps prior to discharge, if they chose to be represented by the Charging Party;
- (c). March 23, 2015 at its Grand Rapids facility by Joe Quisenberry threatened employees with job loss, loss of wages and benefits, other unspecified reprisals, and loss of direct access to supervisors if they chose to be represented by the Charging Party;
- (d). March 23, 2015, at its Grand Rapids facility by Mike Scott threatened employees with job loss if they chose to be represented by the Charging Party;
- (e). March 19, 2015, at its Alanson facility, by Ted Twyman threatened employees with loss of access to supervisors and management if they chose to be represented by the Charging Party.
- 7. Respondent, by Jim Brown, at its Grand Rapids facility, threatened employees with more onerous discipline if they chose to be represented by the Charging Party on the following dates:
 - (a). About February 24, 2015
 - (b). About March 23, 2015

8. Respondent, by the individuals named below, on about the dates and at its locations listed below, threatened employees with a loss of wages and benefits by implying that contract negotiations with the Charging Party would start from scratch:

Agent	Date	Location
(a) Tom Shaeffer	a date in February 2015	Grand Rapids facility
(b) Tom Shaeffer	late February 2015	Grand Rapids facility
(c) Bobby Jordan	early March 2015	Grand Rapids facility
(d) Ted Twyman	March 12, 2015	Alanson facility
(e) Tom Shaeffer	mid-March 2015	Grand Rapids facility
(f) Tom Shaeffer	mid-March 2015	Cadillac facility
(g) Ted Twyman	March 26, 2015	Alanson facility
(h) Charlie Stephenson	late March or early April 2015	Grand Rapids facility
(i) Tom Shaeffer	early April 2015	Grand Rapids facility
(j) Tom Shaeffer	April 9, 2015	Alanson facility

- 9. On February 24, 2015, Respondent, by Craig Pung and Jim Brown, at its Grand Rapids facility, threatened employees with more onerous working conditions if they chose to be represented by the Charging Party.
- 10. Respondent, by the individuals named below, about the dates and at the locations opposite their names, threatened employees with a loss of benefits if they chose to be represented by the Charging Party:

Agent	Date	Location
(a) Tom Shaeffer	mid-March 2015	Cadillac facility
(b) Tom Shaeffer	mid-March 2015	West Branch facility
(c) Ted Twyman	March 19, 2015	Alanson facility
(d) Mark Szlachchic	April 17, 2015	Grand Rapids facility

Respondent, by the individuals named below, on about the dates and at the locations opposite their names, threatened employees that they would lose their seniority and any rights that accompanied such seniority, if the employees chose to be represented by the Charging Party:

Agent	Date	Location
(a) Ted Twyman	March 19, 2015	Alanson facility
(b) Amy Campbell	March 27, 2015	Grand Rapids facility
(c) Tom Shaeffer	Mid-March 2015	Grand Rapids facility
(d) Tom Shaeffer	a date in April 2015	Alanson facility
(e) Mark Szlachchic	Mid-April 2015	Grand Rapids facility

12(a). Respondent, by the individuals named below, on about the dates and at the locations opposite their names, threatened employees with job loss if they chose to be represented by the Charging Party:

Agent	Date	Location
(a) Tom Shaeffer	mid-March 2015	Grand Rapids facility
(b) Jim Brown	April 20, 2015	Grand Rapids facility
(c) Mark Szlachchic	April 22, 2015	Grand Rapids facility
(d) Ted Twyman	May 20, 2015	Grand Rapids facility

- (b). About March 23, 2015, Respondent, by through Ted Twyman and Tom Schaeffer, by a letter sent to employees' homes, threatened employees with job loss if they chose to be represented by the Charging Party.
- 13. About May 8, 2015, Respondent, by Mike Scott at its Grand Rapids facility, threatened employees with discharge if they chose to be represented by the Charging Party.
- 14. About April 17, 2015 and May 8, 2015, Respondent, by Ted Twyman, at its Grand Rapids facility, by telling its employees that a grievance procedure process is virtually meaningless informed its employees that it would be futile for them to select the Charging Party as their bargaining representative.
- Respondent, by the individuals listed below and about the following dates at the Grand Rapids facility coercively interrogated employees about their union sympathies and activities:
 - (a). March 20, 2015 by Amy Campbell
 - (b). March 21, 2015 by Ryan Norman
 - (c). March 23, 2015 by Mike Scott
 - (d). Early April 2015 by Dean Mercer
 - (e). April 3, 2015 by Mark Lee
 - (f). April 6, 2015 by Mike Scott
 - (g). April 22, 2015 by Jim Brown
- 16. Respondent, by the individuals named below, on about the dates and at the locations opposite their names, solicited employee grievances and promised to remedy those grievances if employees voted against the Charging Party:

Agent	Date	Location
(a) Mike Scott	March 23, 2015	Grand Rapids facility
(b) Tom Shaeffer	Early April 2015	Grand Rapids facility
(c) Tom Shaeffer	April 21, 2015	Alanson facility
(d) Ted Twyman	April 27, 2015	Grand Rapids facility
(e) Todd Yocum	April 28, 2015	Grand Rapids facility

17. Respondent, by the individuals named below, on about the dates and at the locations opposite their names, promised employees an improved safety bonus program.

Agent	Date	Location
(a) Ted Twyman and Todd Youcum	February, 2015	Grand Rapids facility
(b) Ted Twyman and Todd Youcum	March 19, 2015	Alanson facility

- 18. About April 30, 2015, Respondent, by Jim Brown, outside of its Grand Rapids facility, by taking video recordings of employees as they spoke with Charging Party agents, engaged in surveillance of employees engaged in union activities.
- 19. About May 7, 2015, Respondent, by Mike Scott at its Grand Rapids facility, by telling employees that Respondent knew how an employee voted, created an impression among its employees that their union activities were under surveillance by Respondent.
- 20(a). Respondent, by the individuals named below, on about the dates and at the locations opposite their names, prohibited employees from discussing the Charging Party:

Agent	Date	Location
(i) Todd Yocum	March 26, 2015	Alanson facility
(ii) Marck Szlachchic	April 20, 2015	Grand Rapids facility

- (b). On or about May 28, 2015, Respondent, by Todd Yocum at its Grand Rapids facility, prohibited employees from wearing hats displaying union insignia.
 - 21(a). About February 19, 2015, Respondent terminated its employee George Brewster.
- (b). Between April 22 and May 7, 2015, Respondent issued to its employees at its Michigan facilities gift cards valued between \$250 and \$500.
- (c). About April 9, 2015, Respondent reduced the scheduled hours of its employee Jessie Silva.
- (d). About April 14, 2015, Respondent transferred its employee Jeff Johnson to an off-site work assignment.
- (e). About April 20, 2015, Respondent issued a verbal warning to its employee Jamie Compton.
- (f). About May 12, 2015, Respondent issued a verbal warning to its employee Reggie Chambers.
- (g). About May 24, 2015, Respondent issued a verbal written warning and a written warning to its employee Reggie Chambers.
- (h). On May 28, 2015, Respondent issued a written warning to its employee Fred Moore.
- 22. Respondent engaged in the conduct described above in paragraph 21 because the named employees assisted the Charging Party and engaged in concerted activities, and to discourage employees from engaging in these activities.
- 23. By the conduct described in paragraphs 5 through 20, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.
- 24. By the conduct described above in paragraphs 21 and 22, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.
- 25. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, it is prayed that Respondent be ordered to:

1. Cease and desist from:

- (a). engaging in the conduct described above in paragraph 5 through 22 or in any like or related manner restraining, coercing or interfering with employees in the exercise of the rights guaranteed in Section 7 of the Act.
- (b). engaging in the conduct described above in paragraphs 21 and 22, or in any like or related manner discriminating against its employees in regard to their hire or terms or conditions of employment, thereby discouraging membership in, sympathies for, or activities on behalf of the Charging Party or any other labor organization.

2. Take the following affirmative action:

- (a). Rescind and remove from its files and records all references to the discharge and disciplinary actions described above in paragraphs 21(a), (e), (f), (g) and (h) and notify the employees named therein individually, in writing, that this has been done, and that these actions will not be used against them in any way.
- (b). Make whole the employees named above in paragraphs 21(c) and (d) for any loss of earnings suffered by them as a result of Respondent's conduct described therein by payment to them of backpay together with interest in accordance with Board policy.
- (c). Offer George Brewster immediate and full reinstatement to his former position of employment, or, if the position is no longer available, to a substantially equivalent position, without prejudice to his seniority or other benefits and privileges previously enjoyed and make him whole for any loss of earnings or other benefits he may have suffered by reason of the discrimination against him, and for his search-for-work and work-related expenses regardless of whether those expenses exceed his earnings at interim employment, together with interest in accordance with Board policy.
 - (d). Post appropriate notices to employees in all its Michigan facilities.
- (e). Convene meetings at each of its Michigan facilities during working time, scheduled to ensure the widest possible attendance, at which the notice to employees will be read to all employees, supervisors, and managers. The meetings shall be held in the presence of a Board agent, and the notice and shall be read by Tom Shaeffer (or his successor) or, at the Respondents' option, by the Board agent in the presence of Shaeffer (or his successor), Mark Lee, Amy Campbell, or Ted Twyman. At least one of these individuals (or their successors) must be in attendance at each reading, and each of these individuals must attend at least one reading. At least two supervisors/managers identified above in paragraph 4, must be present at each reading.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the second consolidated amended complaint. The answer must be <u>received by this office on or before December 9, 2015, or postmarked on or before December 8, 2015</u>. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on E-File Case Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the unanswered allegations in the second consolidated amended complaint are true.

II. REPORT ON OBJECTIONS

Pursuant to a petition filed on March 11, 2015, and a Stipulated Election Agreement approved on April 2, 2015, a mixed mail/manual secret ballot election was completed on May 7, 2015, under the direction and supervision of the Regional Director for Region 7 of the National Labor Relations Board in the following unit of employees:

The results of the election were as follows:

Approximate number of eligible voters	158
Void ballots	
Votes cast for the Petitioner	71
Votes cast against the Petitioner	82
Valid votes counted	
Challenged ballots	2
Valid votes counted plus challenged ballots	

Challenged ballots are not sufficient in number to affect the results of the election.

On May 14, 2015, the Petitioner filed timely Objections to Conduct Affecting the Results of the Election, a copy of which was served on the Employer, and a copy of which is attached hereto as Attachment 1.

Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned, after reasonable notice to all parties to present relevant evidence, has conducted an investigation of the objections and hereby issues this Report on Objections.

Inasmuch as substantial and material credibility issues have been raised in the investigation of the objections, it is the opinion of the undersigned that those issues can best be resolved on the basis of record testimony and/or other evidence developed at a hearing.

III. ORDER CONSOLIDATING UNFAIR LABOR PRACTICE AND REPRESENTATION CASES

In view of the parallel nature of issues raised by the Objections and the second consolidated amended complaint allegations, and as all involve material issues of fact, including credibility resolutions, the undersigned concludes, as ordered below, that the Objections should be heard and considered by an administrative law judge of the Board simultaneously with the unfair labor practice allegations, and the undersigned so orders pursuant to Section 102.69 (c)(1)(ii) of the Board's Rules and Regulations.

IT IS HEREBY ORDERED, pursuant to Section 102.33 of the Board's Rules and Regulations, Series 8, as amended, that Cases 07-CA-146820, 07-CA-148609, 07-CA-149511, 07-CA-152332, 07-CA-155882 and 07-RC-147973 be, and they hereby are, consolidated for the purposes of hearing, ruling and decision by an administrative law judge, and that thereafter Case 07-RC-147973 be transferred to and continued before the Board in Washington, D.C., and that the provisions of Sections 102.46 and 102.69(c)(2) of the Board's Rules and Regulations shall govern the filing of exceptions.

IV. NOTICE OF CONSOLIDATED HEARING

PLEASE TAKE NOTICE THAT on February 16, 2016, 10:00 a.m. at the Gerald R. Ford Federal Building, 110 Michigan Street, N.W., Room 299, Grand Rapids, Michigan, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, any party to this proceeding has the right to appear and present testimony regarding the allegations in this second consolidated amended complaint and the objections. The procedures to be followed at the

hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: November 25, 2015

/s/ Terry Morgan

Terry Morgan, Regional Director National Labor Relations Board Region Seven 477 Michigan Ave Room 300 Detroit, MI 48226-2543

Attachments